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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,386	08/18/2003	Paul C. Wacker	H0005399 US	3629

128 7590 04/23/2004

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EXAMINER
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NORMAN, MARCE

ART UNIT	PAPER NUMBER
	3744

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/643,386	WACKER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Marc E. Norman	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 August 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 13, 17, and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan.

As per claims 1, 13, 17, and 24, Morgan discloses a configuring system comprising a programmable thermostat 10 and an interface circuit/port (transceiver – column 4, lines 1-4) for connection to an external device (remote controller 15), via a wireless connection.

As per claim 2, Morgan discloses the port being an infrared port (column 5, lines 1-3).

As per claim 3-5, 25, and 26, Morgan discloses temperature sensor 130, and device 15 programming/configuring/adjusting thermostat 10 (Abstract, lines 5-10).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6-12, 14-16, 18-23, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan in view of Fox et al.

As per claims 6-8, 10, and 11, Morgan does not teach the external device being a PDA, personal computer, or a communication network. Fox et al. teaches remote programming of a thermostat using a computer network or personal computer (column 1, lines 44-49). (While Fox et al. does not specifically mention the interface being a PDA, Official Notice is taken that this is simply an alternate and well-known type of computer device that would have been obvious to one of ordinary skill in the art – see for example Brown et al. for an application of a PDA type (column 3, line 60) in conjunction with an infrared connection applied to environmental controls). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply these types of external devices to the system of Morgan for the purpose providing the user with a user-friendly graphical user interface (Fox et al., column 1, lines 47-49).

As per claims 9 and 12, Morgan further teaches the device being capable of programming the thermostat (Abstract, lines 5-10).

As per claims 14, 15, and 18, see discussions of claims 2 and 6-8, above.

As per claim 16, Morgan further teaches configuring the thermostat (as discussed above regarding claims 3-5) and controllably adjusting set points of the thermostat (Abstract, lines 5-8).

As per claim 19, Fox further teaches the computer being connected via the internet (column 2, line 14).

As per claim 20, both Morgan and Fox et al. teach sending a number (e.g., a temperature) to the thermostat. While they do not specifically teach downloading a logo, Official Notice is taken that this is simply non-functional descriptive matter and, as such, carries no patentable weight.

As per claim 21, see discussion of claims 6-8 regarding use of a PDA.

As per claim 22, Morgan teaches display means (Figure 1).

As per claim 23, Morgan teaches the thermostat being connected to means for managing air in a space (column 5, lines 49-53).

As per claims 27 and 28, see discussions above of claims 16 and 6, respectively.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 703-305-2711. The examiner can normally be reached on Mon.-Fri., 8:00-5:30, with first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on 703-308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MN



**MARC NORMAN**  
**PRIMARY EXAMINER**